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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10

11 CARLOS CORTEZ DOMINGUEZ, )

12 Petitioner, )

13 v. )

14 UNKNOWN, )

15 Respondent. )  
16 \_\_\_\_\_ )

Case No. SA CV 12-1012 CAS (JCG)

**ORDER: (1) CONSTRUING  
PETITION FOR WRIT OF HABEAS  
CORPUS AS MOTION TO AMEND;  
AND (2) CLOSING THIS ACTION**

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18 **I.**

19 **INTRODUCTION AND SUMMARY**

20 On May 23, 2012, petitioner Carlos Cortez Dominguez (“Petitioner”), a state  
21 prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus (“Petition”)  
22 challenging his 2010 state court conviction. (Pet. at 1.)<sup>1</sup> However, since Petitioner  
23 currently has another pending habeas action in *this* Court, the Petition will be  
24 considered for filing in that previously filed action. This action will be closed.

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28 <sup>1</sup> The Court sequentially numbers the pages of the Petition, *i.e.*, pages 1-73.

## II.

### RELEVANT PROCEDURAL HISTORY

On July 29, 2010, Petitioner was convicted in Orange County Superior Court of attempted murder, resisting arrest, and two counts of assault with a deadly weapon. (Pet. at 1, 8); *see also People v. Dominguez*, 2011 WL 3810236, at \*1 (Cal. Ct. App. Aug. 29, 2011). Petitioner appealed, and the California Court of Appeal affirmed the conviction on August 29, 2011. (Pet. at 2.) Petitioner then filed a petition for review in the California Supreme Court, which was denied on November 2, 2011. (*Id.*)

Petitioner has since filed *three* federal habeas petitions challenging the *same* 2010 state court conviction. First, on March 5, 2012, Petitioner filed a federal petition in the Eastern District of California (“First Action”). (*See* Eastern District Case No. 2:12-CV-0580-DAD.) On March 14, 2012, the First Action was transferred to the Central District of California and *remains pending*. (*See* Central District Case No. SA CV 12-0448 CAS (JCG).)

Then, on March 14, 2012, Petitioner filed a second federal habeas petition in this District. (*See* Central District Case No. SA CV 12-0398 CAS (JCG).) On April 11, 2012, this Court summarily dismissed that petition as being duplicative of the First Action. (*See id.*, Docket No. 4.)

The instant Petition was filed in the Eastern District on May 23, 2012, and transferred here on June 12, 2012. (*See* Docket No. 4.)

## III.

### DISCUSSION

Under the Antiterrorism and Effective Death Penalty Act, a second or successive habeas corpus application must be dismissed unless it meets one of the exceptions listed in 28 U.S.C. § 2244(b)(2). *Woods v. Carey*, 525 F.3d 886, 888 (9th Cir. 2008). And a new petition is “second or successive” when “it raises claims that were or could have been adjudicated on their merits in an earlier petition.” *Cooper v. Calderon*, 274 F.3d 1270, 1273 (9th Cir. 2001) (*per curiam*). However, when a *pro se*

petitioner files a new habeas petition “*before* the adjudication of a prior petition is complete, the new petition should be construed as a motion to amend the pending petition rather than as a successive application.” *Woods*, 525 F.3d at 888, 890 (emphasis added).

Here, Petitioner filed the instant Petition prior to the adjudication of the First Action, which remains pending. (*See* Central District Case No. SA CV 12-0448 CAS (JCG).) As such, the Petition should be construed as a motion to amend the petition filed in the First Action. *See Woods*, 525 F.3d at 890. The Court will thus consider the Petition as a filing in the First Action and will close this case as being duplicative.

#### IV.

#### ORDER

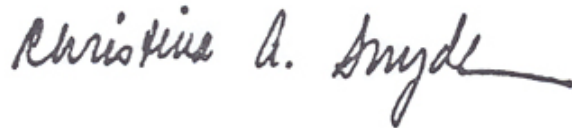
For the foregoing reasons, **IT IS ORDERED** as follows:

(1) the Clerk of Court shall file the instant Petition as a Motion to Amend Petition in Central District Case No. SA CV 12-0448 CAS (JCG);

(2) the Clerk of Court shall file this Order in this action *and* in Central District Case No. SA CV 12-0448 CAS (JCG); and

(3) the Clerk of Court shall close this action as being duplicative.

DATED: July 3, 2012



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HON. CHRISTINA A. SNYDER  
UNITED STATES DISTRICT JUDGE